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15 **UNITED STATES BANKRUPTCY COURT**
16 **DISTRICT OF NEVADA**

17 In re:

Bankruptcy No. BK-S-09-23539-MKN
Chapter 11

18 ASCENDANT UTAH, LLC

19 Debtor.

**SECURED CREDITOR NEVADA
COMMERCE BANK'S LIMITED
OPPOSITION TO DEBTOR'S MOTION
TO DISMISS CASE**

DATE: February 3, 2010

TIME: 9:30 a.m.

20 Secured Creditor, Nevada Commerce Bank ("NCB") by and through its attorneys,
21 Candace C. Carlyon, Esq. and Tracy M. O'Steen, Esq., of the law firm of Shea & Carlyon, Ltd.,
22 hereby submits its limited opposition (the "Opposition") to Debtor's Motion to Dismiss Case
(the "Motion").

23 Although NCB has no objection to the ultimate dismissal of this matter, it does object to
24 the timing of dismissal. NCB obtained relief from the automatic stay via Court order entered
25 on January 13, 2010, and located on the Court's docket as No. 66 (the "Order"). Pursuant to
26 that Order, the automatic stay of § 362 was terminated as to NCB and its collateral, which

1 includes approximately 25 acres of real property located in Washington City, Utah 84748 (the
2 "Property"). The Order authorized NCB to enforce any and all of its rights and remedies in that
3 collateral under applicable state law; however, the 14 day stay period of Rule 4001(a)(3) of the
4 Federal Rules of Bankruptcy Procedure was not waived. Currently, a date for NCB's
5 foreclosure sale has not been scheduled due to the notice requirements of the state of Utah (and
6 the fact that the 14-day stay period has not expired), and NCB anticipates that the foreclosure
7 sale will not take place for approximately sixty (60) days. NCB respectfully requests that any
8 dismissal be held in abeyance until after NCB's foreclosure sale has been concluded to prevent
9 the Debtor from re-filing a bankruptcy petition that would, again, prevent and delay completion
10 of the sale. Alternatively, NCB requests that any order dismissing the case provide that the
11 Debtor is prohibited from filing a petition for relief under any chapter of the bankruptcy code
12 until after NCB's foreclosure sale is completed.
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15 DATED this 20th day of January, 2010.

16 SHEA & CARLYON, LTD.
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20 /s/ Tracy O'Steen

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